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January 28, 2021

VIA ECF

Magistrate Judge Elizabeth Cowan Wright  
United States District Court  
District of Minnesota  
342 Federal Building, 316 N. Robert St  
St. Paul, Minnesota 55101

Re: *In Re: Baycol Products Litigation*, MDL No. 1431  
*United States ex rel. Simpson v. Bayer Corp. et al.*, Case No. 08-5758  
(MJD)(ECW)

Dear Magistrate Judge Wright:

We write to bring to the Court's attention a *Touhy* response letter that Bayer received late yesterday afternoon from the Department of Defense (DoD). It is attached as Exhibit A.

After five months of delay, and on the eve of tomorrow's hearing, DoD has finally authorized a witness to sit for a deposition. The identified witness is Lieutenant Colonel Ronald Khoury, and, from what Bayer can tell, he was not involved in any of the relevant events. Rather, he was in medical school at the time the contracts were executed and performed.

DoD's letter also attempts to unilaterally narrow the scope of the deposition—dropping two of Bayer's four topics and significantly revising the other two. Bayer has requested a meet and confer to follow up on these issues.

It remains to be seen, of course, what DoD's testimony will be. DoD still has not stated that it was defrauded or presented any evidence of fraud. At a minimum, DoD's *Touhy* response reinforces Bayer's contention that the Court should preclude or postpone Relator's deposition subpoenas until DoD has sat for a deposition and presented evidence it was defrauded.

Very truly yours,

/s/ Joshua J. Fougere  
Joshua J. Fougere